

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

UNITED STATES OF AMERICA

v.

**JEFFREY WHALEY and
JERRY D. KERLEY**

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**No. 3:10-CR-169
(Phillips/Shirley)**

MEMORANDUM AND ORDER

Defendants have been charged in the Fifth Superseding Indictment with conspiracy to commit wire fraud and bank fraud; eight counts of wire fraud; eight counts of bank fraud; two counts of making a false statement to influence a financial institution; and one count of money laundering. Defendant Whaley is charged with two additional counts of money laundering. The charges in this case stem from eight allegedly fraudulent real estate transactions.

On March 5, 2012, the Honorable C. Clifford Shirley, United States Magistrate Judge, filed a 50-page Report and Recommendation (R&R) [Doc. 92] in which he found that Counts 4 through 9, and Counts 12 through 17 of the Fifth Superseding Indictment were multiplicitous and should be merged. Otherwise, he recommended that defendants' motions to dismiss the indictment [Docs. 46, 48] be denied.

Defendants do not object to the magistrate judge's finding that Counts 4 through 9 and Counts 12 through 17 are multiplicitous and should be merged. The government has filed a notice of election [Doc. 96] merging Counts 12 through 17 of the Fifth Superseding Indictment with Counts 4 through 9 of the Fifth Superseding Indictment, to wit: Count 12 is merged into Count 4; Count 13 is merged into Count 5; Count 14 is merged into Count 6; Count 15 is merged into Count 7; Count 16 is merged into Count 8; Count 17 is merged into Count 9; and consents to the dismissal of Counts 12 through 17 of the Fifth Superseding Indictment, without prejudice. In addition, the government will remove the SunTrust Bank fraud object of the conspiracy charged in Count 1.

This matter is presently before the court on defendants' timely objections to the R&R [Docs. 93, 98]. As required by 28 U.S.C. § 636(b)(1), the court has now undertaken a *de novo* review of those portions of the R&R to which defendants object. Having reviewed the record and the briefs of the parties, the court is not persuaded that the magistrate judge erred in his findings. Defendant's objections are merely a reiteration of the same arguments considered and rejected by the magistrate judge. The reasons having been fully articulated by the magistrate judge, the issuance of a detailed opinion by the undersigned would be duplicative and serve no useful purpose. Consequently, defendants' objections will be overruled, the R&R will be accepted in whole, and the underlying motions to dismiss will be denied.

Defendants' objections to the R&R [Docs. 93, 98] are hereby **OVERRULED** in their entirety whereby the R&R [Doc. 92] is **ACCEPTED IN WHOLE**. Accordingly, defendants' motions to dismiss the indictment [Docs. 46, 48] are **DENIED**.

ENTER:

s/ Thomas W. Phillips
United States District Judge